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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,958	08/21/2003	Carey W. Smith	42P16159	3005
8791	7590	08/06/2007		
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
			EXAMINER CHO, HONG SOL	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 08/06/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/646,958

Applicant(s)

SMITH, CAREY W.

Examiner

Hong Cho

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The following is in response to the amendments filed on 7/5/2007. Claims 1-25 are pending in this application.

### ***Claim Objections***

2. Claims 1, 7, 14, 15 and 21, are objected to because of the following informalities:

Re claims 1, 7, 14, 15 and 21, "the or more" should read - - the one or more - -.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(b) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Araujo et al (US 6108350), hereinafter referred to as Araujo.

Re claims 1, 8, 15, 22 and 25, Araujo discloses a central office (*a second node*, figure 1a, element 130) negotiating with customer premises equipment including an ADSL modem (*a first node*, figure 1, element 110) to use a cell-based protocol (*determining one or more communication protocols via which a second node is capable of communicating with the first node based upon one or more parameters received from the second node during an initialization of communication between the first node and the second node*, column 5, lines 30-40). Araujo discloses implementing cell-based protocol stack after negotiating between the customer premises equipment and the central office such that the cell-based protocol is used on the link (selecting first drivers to implement a first communication protocol if the one or more parameters specify the first communication protocol, column 5, lines 50-53).

Re claim 22, Araujo discloses customer premises equipment with a PC to accommodate protocol stacks (*a first node comprising circuitry that includes a circuit card and a circuit board that includes a circuit card slot that is capable of coupling the circuit card to the circuit board*) and a central office.

Re claims 2, 9 and 16, Araujo discloses selecting a protocol stack for providing a frame-based protocol (*selecting second drivers to implement a second communication protocol if the one or more parameters specifies the second protocol*, column 5, lines 50-53).

Re claims 3, 10 and 17, Araujo discloses a protocol stack comprising an ADSL layer (*channel framing driver*, figure 1a, element 118) implementing ATM layer utilizing ATM protocol (*framing protocol*, figure 1a, element 117) (*the one or more drivers*

*comprise at least one channel framing driver that is capable of implementing, at least in part, at least one framing protocol that is compatible with at least one of an Ethernet protocol and an ATM protocol, column 5, lines 49-58).*

Re claims 4, 11 and 18, Araujo discloses selecting a cell-based protocol stack by customer premises equipment for efficient transmission (*in response at least in part to the selecting, invoking a plug and play (PnP) protocol manager to initiate loading, at least in part, of the one or more drivers into memory, column 6, lines 51-57).*

Re claims 5, 12 and 19, Araujo discloses ATM protocol over ADSL protocol (*the one or more drivers implementing at least one encapsulation protocol that is compatible with an Asynchronous Transfer Mode (ATM) protocol and an Ethernet protocol, column 5, lines 51-53).*

Re claims 6, 13 and 20, Araujo discloses customer premises equipment with an ADSL modem driver to be utilized for selection protocol stack (*the first node comprises at least one modem driver and the determining is performed, at least in part, by the at least one modem driver, figure 1a, element 118).*

Re claims 7, 14 and 21, Araujo discloses a central office negotiating with customer premises equipment to use a cell-based protocol (*initialization of the communication comprises a negotiation between the first node and the second node; and in response at least in part to a request from the first node, the second node transmits during the negotiation the at least one parameter to the first node, column 5, lines 30-40).*

Re claims 23 and 24, Araujo implicitly discloses a PC with a circuit board comprising a bus and a host processor coupled to the bus; and when the circuit card with a DSL modem is coupled to the slot, the circuitry is coupled to the bus.

### ***Response to Arguments***

6. Applicant's arguments filed on 7/5/07 have been fully considered but they are not persuasive.

On page 10 of the Remarks the Applicant argues that Araujo does not disclose a processor selecting first drivers to implement a first communication protocol. The examiner respectively disagrees. Araujo discloses implementing a point-to-point protocol layer, an ATM layer, and an ADSL layer drivers to provide a cell-based protocol after negotiating between the customer premises equipment and the central office such that the cell-based protocol is used on the link (*selecting first drivers to implement a first communication protocol if the one or more parameters specify the first communication protocol*, column 5, lines 50-53).

The examiner concludes the rejection stands.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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hc

Hong Cho  
Patent Examiner  
7/27/07

  
WING CHAN 8/1/07  
SUPERVISORY PATENT EXAMINER